

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP NUMBER 22-1118

BOWDEN APPEAL

THIRD ELECTION DISTRICT

DATE HEARD: JULY 28, 2022

ORDERED BY:

**Mr. Ichniowski, Mr. Bradley,
Ms. Delahay, Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: August 11, 2022

Pleadings

Lesla Bowden (“the Appellant”) appeals the decision of the Director of Land Use and Growth Management (“Planning Director”) to approve Building Permit Number 22-1118 for a Residential Accessory Structure over 600 square feet in area.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on July 8, 2022 and July 15, 2022. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the Subject Property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the St. Mary’s County website on July 20, 2022. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on July 28, 2022 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented.

The Property

Daniel S. Fitzgerald (“the Applicant”) owns the Subject Property, a two lots that together comprise 4,000 square feet and are located at Tax Map 39A, Grid 13, Parcels 19 & 20 at 39595 Lady Baltimore Avenue, Leonardtown, MD 20650. The Subject Property is zoned Residential Neighborhood Conservation (“RNC”).

The St. Mary's County Comprehensive Zoning Ordinance

Pursuant to § 50.1 of the St. Mary's County Comprehensive Zoning Ordinance ("CZO"), the CZO identifies use classifications and defines use types within each classification, and further identifies the zoning districts in which each use type may be located. Use classifications "identify broad categories of uses for which similar regulations shall apply. Use types identified within the classification are intended as examples of types of uses rather than exhaustive lists."

All uses are subject to the general provisions of CZO § 51.2.1:

1. General Provisions. Unless otherwise stated in the standards for a specific use, the following general provisions are applicable to all uses and structures:
 - a. Compliance with procedures for application and approval as required by Article 2; and
 - b. Compliance with special and overlay district requirements as required by Article 4; and
 - c. Compliance with use regulations and standards requirements as required by Article 5; and
 - d. Compliance with site development standards required by Article 6; and
 - e. Compliance with site development and resource protection standards as required by Article 7; and
 - f. Compliance with the St. Mary's County Building Code; and
 - g. Compliance with the St. Mary's County Subdivision Ordinance, Section 30.11, for lots served by a private drive or road.

Accessory uses are further subject to the provisions of CZO § 51.2.4:

4. Accessory Uses. An accessory type use shall be incidental and subordinate to an allowable use, on the same site as an allowable use, and serve an allowable use. Accessory uses identified in Schedule 50.4 shall be permitted on vacant property subject to Section 11.2.4.b. The following general provisions are applicable to all accessory uses and structures.
 - a. No detached, accessory structure shall occupy more than 25 percent of required setback areas.
 - b. No detached, accessory structure shall exceed the maximum permitted height in the zoning district in which the use is proposed.
 - c. Detached accessory structures shall be located no closer than 10 feet to any other accessory or principal structure.
 - d. Accessory structures shall comply with the floodplain provisions of this Ordinance found on Section 76.6.

Evidence Submitted at the Hearing by the Appellant

Appellant presented a slideshow, which was incorporated into the record of the hearing in full. Appellant's testimony included the following:

- St. Clement's Shores is a residential community dating back to 1926, and Lady Baltimore Ave is the main thoroughfare through the community. Appellant lives in St. Clement's Shores directly across from the proposed structure.
- The neighborhood is residential, and there are no garages on Lady Baltimore Avenue from the Woods subdivision at the top of Lady Baltimore Avenue and continuing to the Shores subdivision.
- Allowing a garage, particularly of the propose garage's size and build, would negatively impact the neighborhood and detract from property values.
- That such a negative impact is inconsistent with a stated goal of the Limited Development Area Overly District: "that overall density of development is not increased ... so as to change [a particular area's] prevailing character..."
- There is already frequent flooding and pooling of water from heavy rains on adjacent properties, and that this would be exacerbated with the runoff generated from 1,500 square feet of additional impervious surface and a structure with a 55' long roofline.
- That there are other use types – such as Use Type 66, 120, or 121 – that may better describe the project than Use Type 119, and that these other use types are prohibited within the RNC.
- Appellant also provided concerns of neighbors with respect to health, air quality, privacy, viewsapes, and traffic.

Evidence Submitted at the Hearing by Staff

Stacy Clements, Environmental Planner, briefly provided an overview of the permit, including the proposed location, site plan, and a description of Applicant's proposed structure, a 1,100 square foot garage with a 400 square foot driveway. John Sterling Houser, Assistant County Attorney, then presented a PowerPoint presentation and stated the following:

- The proposed project satisfies all necessary criteria and was properly reviewed by the Department of Land Use & Growth Management ("LUGM").
- The only applicable standards of review for the Project were the general provisions of CZO 51.2.1 and the provisions for accessory use in 51.2.4. As a vacant lot, the project satisfies the provisions of CZO 11.2.4.b, allowing for accessory structures to act as principal buildings on vacant lots.
- Mr. Houser responded to a number of concerns raised in Appellants' written materials, including: square
 - Architectural or aesthetic conformity with neighboring properties was not a standard the building permit had to satisfy;
 - Total lot coverage was within the amount allowed by the CZO; and,
 - The property was exempt from stormwater management review because it proposed less than 5,000 feet of total disturbance.

Mr. Houser called one witness, Amber Thompson. Ms. Thompson is the Permits Manager for LUGM. Ms. Thompson testified that review and approval of permits such as the Applicant's were her responsibility. In her testimony she confirmed that all applicable general standards of CZO 51.2.1 were satisfied, as were all applicable standards from CZO 51.2.4.

Evidence Submitted at the Hearing by the Applicant

The Applicant, represented by Kevin Norris, Esq., presented a powerpoint and gave testimony. Evidence presented by Applicant included:

- Applicant testified to his and his family's longstanding connections and contributions to the St. Clement's Shores Community.
- The lot the garage is proposed to be built on is unimproved, as shown by pictures.
- Applicant's garage is of roughly the same dimensions as Appellant's own house.
- There are several other garages and similar structures spread throughout St. Clement's Shores, and Applicant provided pictures of each.
- Applicant also provided an appraisal that showed no meaningful change in property values if Applicant's garage was constructed.

Public Testimony

In addition to the comments included in Appellant's presentation, three members of the public offered testimony. Their comments were accepted and entered into the record. Public testimony included concerns related to stormwater and drainage, opinions that rain and water would flood onto other adjoining properties, and concern that use and operation of the garage would lead to noise and nuisance for the neighborhood.

Decision

Upon review of the matter, the Board finds and concludes that the Building Permit was properly granted, and will accordingly uphold the Planning Director's decision. The following factors support the Board's decision:

First, the Board believes that the proposed garage was rightly categorized as Use Type # 119 – Accessory General. A garage for personal use is, in almost every circumstance, an accessory to another principal building. The use types identified by Appellant are more appropriate for

commercial uses or businesses, which is not what Applicant wishes to use the structure for – and Ms. Thompson testified that should he so desire to convert the use in the future he would have to file for the proper authorization. The Board also finds that Lots 19 & 20 are vacant, and that CZO 11.4.b.2 therefore allows an accessory building to be built without the need for an accompanying principal structure.

Second, the proposed development satisfies each of the seven general provisions and each of the four provisions specific to accessory uses. Ms. Thompson testified that of the general standards, many were inapplicable to this project. We can summarize the general provisions that needed to be met as follows: requiring the correct procedure to be followed, ensuring applicable Critical Area protections were abided by, and classifying the development within the correct use type. We have already spoken of whether the correct use type was assigned. Ms. Thompson explained the procedure that should have been followed, and all available evidence indicates that procedure was followed and the proper reviews conducted. Regarding the Critical Area program's requirements, Ms. Thompson testified that the development implicates lot coverage limits. She also testified what the proper lot coverage was: 1,500 square feet, with the appropriate math provided in her presentation. The permit authorizes a maximum of 1,500 square feet of development.

Regarding the provisions for accessory use, Ms. Thompson testified that all four are abided by. The project does not propose development in any setback areas nor is it built within ten feet of a maximum structure; the floodplain regulations of CZO 76.6 do not apply, as the property is not within a FEMA-designed flood zone or flood area. Ms. Thompson testified the maximum height for a building in the RNC is 40 feet. Applicant testified that, at its highest, the proposed garage would be approximately 25-30 feet. Therefore, the Board finds all general and accessory

standards satisfied.

As to Appellant's concerns related to privacy, neighborhood conformity, and other concerns not squarely addressed by the general or accessory standards, the Board finds no authority in the CZO within which to bring those considerations within its review of this Building Permit.

ORDER

PURSUANT to Lesa Bowden's appeal of the Planning Director's approval of a building permit for an accessory structure greater than 600 square feet in the Residential Neighborhood Conservation Zone; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Planning Director's decision regarding the approval of the subject building permit is UPHELD.

Date: Aug 11, 2020

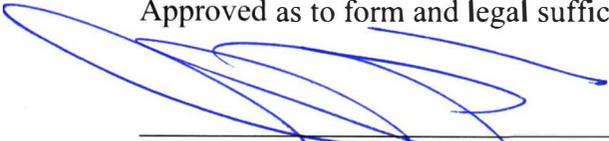

Daniel F. Ichniowski, Chairman

Those voting to uphold the decision:

Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson

Those voting to reverse the decision:

Approved as to form and legal sufficiency



Steve Scott, Board of Appeals Attorney

NOTICE TO APPELLANT

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.